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No. 80-5303

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

ANTONIA BELTRAN, individually and on behalf of all others similarly situated,

Petitioner,

v.

BEVERLEE A. MYERS, individually and in her official capacity as Director of the California State Department of Health; and ELISABETH LYMAN, individually and in her official capacity as Deputy Director of the State Department of Health,

Respondents.

RESPONDENTS' OPPOSITION TO MOTION OF PETITIONER FOR SUMMARY REVERSAL AND REMAND IN PART, AND FOR VACATION AND REMAND IN PART DUE TO INTERVENING LEGISLATION

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RESPONDENTS' OPPOSITION TO MOTION OF PETITION FOR SUMMARY REVERSAL AND REMAND IN PART, AND FOR VACATION AND REMAND IN PART DUE TO INTERVENING LEGISLATION

The Boren/Long Amendment No. 1936 (hereinafter referred to as "Amendment") passed both the Senate and House of Representatives on December 13, 1980, as part of HR 8406 (see 1979-1980 CCH Congressional Index, p. 34,547 (December 19, 1980)) and was signed into law by the President on December 28, 1980. The slip law will be designated Public Law 96-611, § 5.

Petitioner contends that the nature of this legislation and its purpose, as explained in its legislative history, resolves the issue of this case for certain class members, and requests that this Court reverse summarily pursuant to Rule 23.1, Rules of the Supreme Court. In addition, petitioner contends that the case should be remanded for other members of the class who will apply after July 1, 1981. Petitioner's position, however, is untenable.

Respondents have argued at all levels of this litigation that California's transfer of assets rule, under the law prior to the Amendment, does not violate the Supremacy Clause as it does not conflict with any federal statute or regulation. The recent enactment of the Boren/Long Amendment and accompanying legislative intent is in fact supportive of respondents' position. The Boren/Long Amendment is an explicit expression of legislative intent that states should be permitted to apply transfer of assets rules in the Medicaid program, in addition to the Title XVI SSI/SSP cash assistance program. This legislation, especially in light of recent court decisions, was found necessary to correct the practice whereby persons with substantial assets intentionally divest themselves of such assets so that the costs of long-term institutional care will be borne

by the state through its medical assistance program. The enactment of the Boren/Long Amendment cannot be interpreted as a statement of Congress' opinion that, prior thereto, states could not apply transfer of assets rules to the Title XIX Medicaid program. Courts have acknowledged that the use of subsequent legislative pronouncements form a hazardous basis for inferring the intent of an earlier Congress. Furthermore, certain reports of the Senate Finance Committee explicitly state that legislation allowing states to apply transfer rules should not be construed as agreement with those decisions which have struck down such rules.

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THE ENACTMENT OF THE BOREN/LONG AMENDMENT CANNOT BE INTERPRETED AS A STATEMENT OF CONGRESS' OPINION THAT, UNDER THE LAW PRIOR TO THE AMENDMENT, STATES COULD NOT APPLY TRANSFER OF ASSETS RULES IN THE MEDICAID PROGRAM

A. The Amendment Is An Explicit Expression Of Legislative Intent That States Should Be Permitted to Apply Transfer of Assets Rules In The Medicaid Program.

Respondents submit that California's transfer of assets rule, under the law prior to the Amendment, does not violate the Supremacy Clause as it does not conflict with any federal statute or regulation. Although other courts have reached a contrary conclusion,[1/] respondents have argued in their Brief on file with this Court that the Court below, as well as several concurring courts, have reached the correct decision based on the language of those sections and applicable case law. (Dawson v. Beach No. 78-2350 (C.D. Cal. 1979), aff'd. sub nom. Dawson v. Myers, 622 F.2d 1304 (9th Cir. 1980); J.A. 52; J.A. 56; Fabula v. Solomon 463 F.Supp. 830 (D. Md. 1978), rev'd. sub nom. Fabula v. Buck, 598 F.2d 869 (4th Cir. 1979); Lerner v. Division of Family Services 235 N.W.2d 478 (Wis. 1975); Rinefierd v. Blum 412 N.Y.S.2d 526 (4th Dept. 1979).)

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1. Fabula v. Buck (4th Cir. 1979) 598 F.2d 869, Scarpuzza v. Blum (2d Dept. 1980) 426 N.Y.S.2d 505. Both the lower court in Caldwell v. Blum (CCH Medicare and Medicaid Guide, para. 30,093 (N.D.N.Y. 1979)) and the Second Circuit, Caldwell v. Blum (2d Cir. 1980) 621 F.2d 491, pet. for cert. pending No. 79-2034 (filed June 24, 1980), as well as Robinson v. Pratt (CCH Medicare and Medicaid Guide, para. 30,605 (D. Mass. 1980)) also found the transfer of assets rule violative of the Supremacy Clause in those states which did not elect the option available in 42 U.S.C. sec. 1396a(f). These latter three decisions were not final rulings on the merits, but were in the context of motions for a preliminary injunction.

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The enactment of the Boren/Long Amendment is supportive of respondent's position. The Amendment explicitly permits states to do that which states had the authority to do under the prior law, namely, to apply transfer of assets rules in the Title XIX Medicaid Program. The transfer rule under the Amendment is very similar to California's transfer of assets rule.[2/] (Welf. & Inst. Code, § 14015; 22 Cal. Admin. Code, §§ 50408, 50409.) It allows states to take into consideration the resources of an individual within the preceding two years if the individual gave away or sold assets for less than valuable consideration for the purpose of establishing eligibility for Medicaid. States may presume that the transfer was made for the purpose of becoming eligible for benefits, unless the applicant rebuts the presumption by furnishing convincing contrary evidence. The bill also establishes periods of time during which the states may deny the applicant's eligibility.

This legislation was found necessary to correct the frequently utilized practice whereby persons with substantial assets intentionally divest themselves of such assets so that the costs of long-term institutional are will be borne by the state through its medical assistance program. In arguing for the passage of his cosponsored amendment, Senator Russell Long charaterized a transfer of assets for the purpose of establishing eligibility for public assistance as:

> ". . . an abusive practice in which certain individuals transfer substantial assets to their families or to others in order to bring themselves down

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2. The Boren/Long Amendment No. 1936 to HR 8406, as it appears in the Congressional Record at 126 Cong.Rec. S16505 (daily ed. December 13, 1980) is set forth in the Brief of the Respondents at p. 40, fn. 22.

eligibility level which will qualify them for payments under the supplemental security income (SSI) program and for fully paid medical care under the medicaid program." (126 Cong.Rec. S16505 (daily ed. December 13, 1980).)

Senator Long recognized this "abusive practice" as a "substantial fiscal concern for many states." (Ibid.)

Further support for congressional recognition of the need to allow states to impose restrictions on the transfer of assets for the purpose of establishing eligibility for public assistance can be found in the legislative history of that reconciliation bill referred to by Senator Long (Senate Bill 2885). In the General Discussion of (the Senate) Finance Committee Amdendments to Senate Bill 2885 (126 Cong.Rec. S8248 (daily ed. June 26, 1980)), the following comments on the practice of transferring assets to establish SSI eligibility were made:

"The committee believes that it is inappropriate for the public assistance programs to be burdened with the assumption of the support and medical care of individuals who have ample personal resources. . . . The Committee recognizes that there may be cases in which such a transaction takes place in good faith and unforeseen circumstances subsequently require an individual to apply for assistance. The committee believes that such a situation would be quite rare; . . . ." (Emphasis added.) (126 Cong.Rec. S8250 (daily ed. June 26, 1980).)

Thus, with the enactment of the Boren/Long Amendment, Congress has explicitly recognized that states should be permitted to apply transfer of assets rules in the Medicaid program, in addition to the Title XVI, SSI/SSP cash assistance program.

B. Courts Have Recognized That The Use of Subsequent Legislative Pronouncements Form A Hazardous Basis For Inferring The Intent Of An Earlier Congress

Petitioner contends that the legislative history of the Boren/Long Amendment also supports her argument that, under existing law, California and other states are not permitted to apply transfer of assets rules. Petitioner made a similar argument before the Court below based on certain Senate Finance Committee reports. In 1978, as part of the Medicare-Medicaid Administrative and Reimbursement Reform Act, the Senate Finance Committee proposed an amendment to the Medicaid statute requiring states to adopt transfer rules similar to California's. (S. Rep. No. 95-1111, 95th Cong., 2d Sess., 24-25 (1978).) The Senate Committee stated at that time that states were unable to adopt transfer rules under the present law. (Dawson v. Myers (9th Cir. 1980) 622 F.2d 1304, 1308-1309; J.A. 66-67.) The Ninth Circuit, concluding that the Senate Committee was apparently relying on the federal agency's erroneous interpretation of section 1396a(a)(10)(C) of Title 42 of the United States Code, flatly rejected petitioner's argument. (Ibid.)

Petitioner, relying on recent statements of Senator Long, suggests that this Court should also defer to subsequent legislative history. (126 Cong.Rec. S16505 (daily ed., December 13, 1980).) The particular passage which petitioner quotes on page 2 of her motion does not demonstrate clear legislative intent that Congress intended that states could not, under existing law, impose a transfer of assets restriction. This use of subsequent legislative history to interpret a statute is of dubious value. The Court below correctly recognized that pronouncements by a subsequent Congress are not entitled to the same weight as those of the Congress which enacted a measure.

(Banco Nacional de Cuba v. Farr (2d Cir. 1967) 383 F.2d 166, 175, cert.den. (1968) 390 U.S. 956.) In United States v. Price (1960) 361 U.S. 304, 313, this Court stated that: ". . . views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." Furthermore, courts are not bound by such pronouncements and it has been contended that subsequently expressed congressional views should not be relied upon at all. (Dawson v. Myers, 622 F.2d at 1312; J.A. 66, citing Mathews v. Weber (1976) 423 U.S. 261, 272 fn. 7.) Inasmuch as the transfer rule does not conflict with section 1396a(10)(C) of Title 42 of the United States Code (Dawson v. Myers, 622 F.2d at 1312; J.A. 66-67), this Court should not accord deference to the subsequent legislative history of the Medicaid program.

C. Certain Reports Of The Senate Finance Committee Explicitly State That Legislation Allowing States To Apply Transfer Rules Should Not Be Construed As Agreement With Those Decisions Which Have Struck Down Such Rules

Not every amendment of a statute demonstrates legislative intent to make a major change in the substance or effect of a pre-existing law. (Oklahoma Tax Commission, et. al. v. Stanoline Pipeline Co. (10th Cir. 1940) 113 F.2d 853, 856.) Consideration of the surrounding circumstances may indicate that the amendment was merely the result of a legislative intent to clarify the true meaning of the pre-existing statute. In addition, an amendment may reflect the Legislature's desire to meet a new and unanticipated condition brought about by judicial interpretation of the pre-existing law. (Ibid.)

Certain reports of the Senate Finance Committee explicitly state that legislation allowing states to apply transfer of assets rules should not be construed as agreement with court decision which have struck down such rules. In 1980,

the Senate Finance Committee, as part of the budget reconciliation bill, supported an amendment (Senate Bill 2885, § 511) restricting transfer of assets in the Title XVI SSI/SSP cash assistance program and the Title XIX Medicaid program. (126 Cong.Rec. S8250 (daily ed. June 26, 1980).) Although this legislation passed the Senate, and was concurred in by the House, agreement could not be reached in the context of the reconciliation conference. (Ibid.) Senator Long, in commenting on the Boren/Long Amendment, referred to this section of the budget reconciliation bill. (126 Cong.Rec. S16505 (daily ed. December 13, 1980).) The Senate Finance Committee, in its explanation of the S2885 reconciliation provisions, specifically pointed out that its attempt to limit the disposal of assets for the purpose of establishing SSI eligibility should not be interpreted as agreement with the reasoning of the cases which had struck down transfer of assets rules.

> "The Committee has been told that transfers of this type frequently occur, particularly in cases where an aged individual may face substantial medical expenses. For example, in connection with protracted nursing home care, by transferring assets to a relative, the individual qualifies not only for SSI but also for medicaid. Moreover, under certain court decisions, the absence of an SSI provision in this area has been found to lead to similar problems in connection with the medically needy segment of the medicaid program. (The committee does not intend that its recognition of the existence of these court decisions should be construed as agreement that they are correct.)"
>
> ". . . . . ."

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"The committee is aware as indicated above, that certain courts have held that the absence of a provision of this type in the SSI statute precludes States from applying such a rule in 'medically needy' cases. The adoption of this provision will remedy the problems this has created for the States." (Emphasis added.) (126 Cong.Rec. S8250 (daily ed. June 26, 1980).)

Respondents submit that the foregoing statements demonstrate that the Senate Finance Committee was apparently aware in June 1980 of the decisions in New York (Caldwell v. Blum (2d Cir. 1980) 621 F.2d 491, pet. for cert. pending. (No. 79-2034); Scarpuzza v. Blum (2d Dept. 1980) 426 N.Y.S.2d 505) and in Maryland (Fabula v. Buck (4th Cir. 1979) 598 F.2d 869), invalidating transfer of assets rules. The Senate Finance Committee was concerned about remedying the problems created by these court decisions which found that state transfer of assets rules conflicted with the section 1396a(a)(10)(C) of Title 42 of the United States Code and thus violated the Supremacy Clause.

Therefore, the enactment of the Boren/Long Amendment and accompanying legislative intent should not be interpreted as a statement of congressional opinion that states could not, under the law prior to that Amendment, apply transfer of assets rules in their Title XIX Medicaid programs.

CONCLUSION

Based on the foregoing, petitioner's motion for summary reversal and remand in part should be denied. Petitioner also moves for vacation of the decision of the Court of Appeals and for remand for those class members who will apply on or after July 1, 1981. This relief is requested so that the district

court may determine whether California's transfer of assets rule will comply with federal law that will allegedly be implemented on July 1, 1981.[3/] Respondents would simply submit that this relief is beyond the scope of these proceedings. Whether California's transfer of assets rule complies with federal law and regulations, yet to be written or implemented, is not a question that should be decided in the context of this litigation. This issue is not ripe for judicial review. Therefore, respondents respectfully submit that petitioner's motion should be denied in toto.

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3. Petitioner contends that because there is no specific effective date section in section 5 of Pub. L. 96-611 which adds subsection (j) to the Medicaid statute, that this provision is subject to the law's general effective date of July 1, 1981. (Pub. L. 96-611, § 2.)

CERTIFICATE OF SERVICE

I, Richard J. Magasin, a member of the Bar of the Supreme Court, do hereby certify that I have served on the 19th day of January, 1981, one copy of RESPONDENTS' OPPOSITION TO MOTION OF PETITIONER FOR SUMMARY REVERSAL AND REMAND IN PART, AND FOR VACATION AND REMAND IN PART DUE TO INTERVENING LEGISLATION, with postage thereon fully prepared, in the United States mail at Los Angeles, California, addressed to:

GILL DEFORD
NEAL S. DUDOVITZ
National Senior Citizens Law center
1636 West 8th Street, Suite 201
Los Angeles, CA 90017

I further certify that all parties required to be served have been served.

R Magasin
RICHARD J. MAGASIN

Attorney for Respondents